EXHIBIT 1

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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Casey Hall-Landers,

Plaintiff,

v. 20 Civ. 3250 (GBD)(SLC)

NEW YORK UNIVERSITY,

Oral Argument

Defendant.

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New York, N.Y.
November 21, 2024
10:00 a.m.

Before:

HON. SARAH L. CAVE,

U.S. Magistrate Judge

APPEARANCES

BURSOR & FISHER P.A.
Attorneys for Plaintiff
BY: ANDREW OBERGFELL

DLA PIPER LLP (US)
Attorneys for Defendant
BY: KEARA M. GORDON
COLLEEN GULLIVER
CONNOR D. ROWINSKI

THE COURT: Good morning, everyone. Please be seated.

(Case called)

MR. OBERGFELL: Good morning, your Honor. Andrew Obergfell from Bursor & Fisher on behalf of the plaintiff, Casey Hall-Landers.

THE COURT: Good morning.

MS. GORDON: Good morning, your Honor. Keara Gordon with DLA Piper on behalf of NYU.

THE COURT: Good morning.

MS. GULLIVER: Good morning, your Honor. Colleen Gulliver from DLA Piper, also on behalf of NYU.

THE COURT: Good morning.

MR. ROWINSKI: Good morning, your Honor. Connor Rowinski of DLA Piper on behalf of the defendant.

THE COURT: Good morning.

MS. GORDON: Your Honor, may I also just mention that Britt Schoepp-Wong is here from NYU. Britt is the Assistant Policy Advisor to the President and Associate General Counsel.

THE COURT: Okay. Very good. Thank you.

So we're here this morning on the plaintiff's motion for class certification, which Judge Daniels has referred to me for a report and recommendation. So Mr. Obergfell, it's your motion. You can proceed.

MR. OBERGFELL: May I use the podium, your Honor?

THE COURT: Yes, wherever you are comfortable.

MR. OBERGFELL: Good morning, your Honor. Andrew Obergfell for the plaintiff, Casey Hall-Landers. Before I begin, if I may, I'd like to reserve five minutes for rebuttal?

THE COURT: Of course.

MR. OBERGFELL: Your Honor, this case is appropriate for class certification because there was a common implied contract between plaintiff and class members and NYU for the provision of in-person and on-campus education in exchange for tuition payments by the students.

THE COURT: And if I could clarify, this is only a tuition class; we're no longer including fees?

MR. OBERGFELL: This is only a tuition class, your Honor.

THE COURT: Thank you.

MR. OBERGFELL: And NYU breached that implied contract as to all of its students when it closed its campus as of March 23, 2020, and then made a university-wide decision to fail to refund any tuition to any students across NYU. In deciding this motion, we're guided by the Second Circuit's decision in this case, and the Second Circuit has already held that there are three forms of evidence that can form the basis of an implied contract for in-person education.

The first is NYU's Albert portal, or online course registration portal, which students used to register for their spring 2020 classes in advance of the spring 2020 semester.

THE COURT: If I could just pause you there? The Second Circuit, as you said, which is what guides us, says that in terms of focusing on the existence of an implied contract, the court said: The role is to ascertain the intention of the parties at the time they entered into the contract. When is Ms. Hall-Landers alleging that they entered into a contract with NYU?

MR. OBERGFELL: Well, New York law states that at the time of enrollment, the relationship between the student and the university becomes contractual.

THE COURT: Okay.

MR. OBERGFELL: However, the terms of the implied contract are informed by the bulletin, circulars, and other written materials or oral statements from the university to the students. So the relationship between plaintiff and NYU became contractual at the time of enrollment. However, each of the bulletins that were referenced by Second Circuit would assist in forming the terms of the implied contract.

THE COURT: Of course. But the reason I asked that question then was because you mentioned the Albert portal, which is not something that a prospective student at the time that they enrolled in NYU would have access to. And so, I understand that that was something that was alleged in the pleadings. The Second Circuit might not have had the facts at the time in front of them not knowing that that is not

something that the prospective student, including the plaintiff here, would have had access to at the time the contract was formed.

MR. OBERGFELL: That's actually factually incorrect, your Honor --

THE COURT: Okay.

MR. OBERGFELL: -- because there is a public version of the Albert portal. You cannot actually register for classes, but all of the information that is available on the Albert portal is available publicly on NYU's course search page on their public website. And that was testified by Mr. Clay Shirky, NYU's 30(b)(6) witness.

THE COURT: Okay.

MR. OBERGFELL: So that did exist at the time of enrollment, but I don't think there was any basis in New York law to suggest that when students specifically enrolled for their classes for the spring 2020 semester that those terms would not be part of the implied contract. I see no basis in New York law to reach that conclusion.

THE COURT: Well, that could change the nature of the contract. You would then be suggesting that the terms of the contract would change over time.

MR. OBERGFELL: Well, there's an ongoing relationship between NYU and the students. Just like NYU could change its policies vis-a-vis the students, which would presumably become

part of the implied contract over a student's tenure, obviously representations that are made by NYU to the student could add to the terms of the implied contract.

So just focusing on the Albert portal for a moment, right, and we would argue, your Honor, that the Second Circuit has determined that this is something that we can look at for purposes of defining the terms of the implied contract. But Mr. Shirky, who was, as I mentioned, NYU's 30(b)(6) witness, he gave us a couple of important pieces of information regarding this Albert portal.

[redacted]

[redacted]

THE COURT: The class definition uses the phrase "New York campuses." What are the New York campuses that that refers to?

MR. OBERGFELL: That would be the Washington Square campus and the Brooklyn campus. [redacted]

THE COURT: Thank you.

MR. OBERGFELL: Going back to Mr. Shirky's testimony just to kind of put a period on this——and this is document

122-1, exhibit 1 to the Westcot declaration—

However, there's more. The Second Circuit also instructed that we can look at the marketing materials that were made available to the student.

The first is what I'll call university-wide marketing materials, and those are materials that are not addressed to any specific school, program, or area of study. They talk about NYU broadly and what a student can expect when they enroll at NYU. The second tier are school-specific or program-specific marketing materials. For example, if I'm a

student who is planning to enroll in the College of Arts and Sciences as an undergraduate, I will get both these university-wide marketing materials and specific information regarding the College of Arts and Sciences.

So for purposes of this discussion, I'd like to just point the Court to two of these university-wide marketing materials, which we contend forms the basis of an implied contract. The first one is exhibit 6 to the Westcot declaration. This is document 122-6. This is a welcome pamphlet from NYU which is entitled: You've Made It. On the very first page of that booklet, and this is on——I'm using Bates numbers now——NYU_Hall-Landers_1066. It says in large capital letters: NYU and New York City are waiting for you. And then, in the small print on the same page, it says: Here's a glimpse of what your life will be like at NYU. So this marketing material sent to all admitted students is clearly sign posting to the student that they will receive what is contained in this booklet.

Flipping through the booklet, for example, looking to page 1067, there's a large heading that states: It's your city now, with an image of students convening together in a park, which obviously refers to New York City because if you were to flip to the next pages, 1068 and thereafter, the booklet discusses specific resources in New York City, and more than that, specific resources both in Greenwich Village and in

Downtown Brooklyn, which is where NYU's two main undergraduate campuses are located.

And there's more in this booklet that conveys to students what they can expect. For example, on page 1075, it states: Find your favorite places to eat, join a club, play intramurals, and volunteer. Just look around and you'll see NYU communities that suit your interests. This is clearly referring students to an in-person experience at NYU, talking about the various resources both on NYU's campus and in New York City.

THE COURT: Some of the cases refer to puffery and kind of generalized language about the overall experience at a university. This is what NYU is saying about New York City here, you would probably see in Harvard's materials about Boston, and, you know, UCLA's materials about being near Hollywood. So how is this not just general puffery about what the university atmosphere is like?

MR. OBERGFELL: The first thing I would say is the issue of puffery is itself a class issue; whether or not these materials can be considered puffery, or a term of an implied contract, is itself a class issue with no differentiation among students, but it's not puffery, your Honor. As we indicated in our papers, puffery is a subjective statement that suggests that, you know, something is the best or, you know, the greatest or something that could not -- it's a subjective claim

that could not be objectively proven.

Here what NYU is conveying to the student is here a glimpse of what your life will be. And then, it lays out not only resources in New York City but information as to specific clubs, intramural sports, cultural things such as sports and recreation activities, basically painting this picture of what their college life will be at NYU. And then, NYU took all of that away when it closed its campus in March of 2020.

[redacted] So for NYU to put that out there and then pull it away, we think is by no means puffery.

Just going back to exhibit 6, you know, I think page 1081 also draws the point that I'm talking about here. It says: Now that we've shown you what college life is like at NYU. Join us and see for yourself. This is clearly conveying to an admitted student that is what's conveyed in these marketing materials is what their life would be like if they chose to enroll at NYU.

THE COURT: Can we focus for a minute on the paid tuition component of the class definition?

MR. OBERGFELL: Sure.

THE COURT: And can you talk a little bit more about what that means to say "paid tuition"? As we know, the plaintiff here, the plaintiff's father and I think grandmother paid some or all of the tuition for them. What about a student whose tuition is paid, you know, from a 529 program or from an external grant or scholarship? What does paid tuition mean, and how is that common to the class and not an individualized question?

MR. OBERGFELL: It's not an individualized question, your Honor, because the class is people who paid, meaning people who paid in the form of tuition payments to themselves and to NYU and who are in privity of contract with NYU. So the means how the student obtained the funds to pay the tuition is not particularly relevant. So here, for example, plaintiff testified that the money was a gift from their father.

THE COURT: Right.

MR. OBERGFELL: Well, a gift has a very specific legal definition. It means a voluntary transfer without consideration, and we've cited authority for that in our papers. So legally speaking, the money was transferred from the father to Hall-Landers, and then Hall-Landers paid that money to NYU in consideration for tuition. It's the same if

you get a loan and it's paid; you have a repayment obligation. Obviously, we would not encompass people who got financial aid or a free ride. That would not be included, but I don't think it's a relevant consideration as to how the student came up with the money in order to pay the tuition so long as they paid.

THE COURT: How is it not relevant to the remedy though? Because if Hall-Landers were able to recover from NYU and got $41,000 back, Hall-Landers was not out of pocket $41,000. The father was out-of-pocket $41,000. So isn't it a windfall to Hall-Landers to give an award of the tuition that was paid by the father?

MR. OBERGFELL: Two things to say on that, your Honor. Based on the legal definition of a gift, that is not how it would work. Because If someone gave me a gift, that money is now mine. If I choose to take it to the store and purchase a product and I'm harmed by that product, I have every right to recover what I paid for it based on the legal definition of a gift, number one.

Number two is that this whole argument by NYU, I think, is a little bit disingenuous because at the motion to dismiss stage, if the Court will recall, NYU at length argued that parents did not have standing in order to seek recovery for any tuition money that they paid. They specifically represented to this Court in their MTD brief that any contract

is between the student and the university.

So now they want to argue that the parent doesn't have standing and the student doesn't have an injury, so NYU gets to keep the money. To me, that's the only possible windfall outcome is if NYU gets to company the money based on what we would think is an unfair form of immunity for NYU, especially because plaintiff and NYU are in privity of contract, and plaintiff has every right to enforce the terms of contract against NYU. Just as, your Honor, NYU had every right to enforce the contract against plaintiff. So if plaintiff did not pay their tuition for some reason, it wasn't plaintiff's father or somebody else who was going to be on the hook. NYU would have a cause of action against plaintiff. So it can't be that NYU can enforce the contract but plaintiff can't. So I think that's an unfair argument.

THE COURT: Okay. Thank you.

MR. OBERGFELL: Just turning back, if I may, to the university-wide marketing materials? I would like to just point the Court to another example that I think is really important, and that is exhibit 8 to the Westcot declaration. It's document 122-8. It's called: NYU is. And we'll see some very similar representations in this booklet that were made in the You've Made It booklet. But I'd like to point the Court to the first page, the very first page of the booklet, Bates number 1474. It says: NYU and New York City are waiting for

you in bold capital letters with an image of students in front of NYU's buildings in New York City.

The next page, Bates number 1475, says, You applied to NYU because of the wealth of opportunities that are available to you in New York City, and there's a picture behind that text of students in Washington Square Park where NYU is located. And this booklet, much like the You've Made It booklet, conveys very similar information about NYU's location in New York City, the benefits of being in New York City, specifically the benefits of being in Greenwich Village and Downtown Brooklyn where its campuses are located, and provides very specific and detailed products and services that will be available as a full-time student at NYU, including access to clubs, including access to physical campus facilities. In fact, they even defined it as university-wide resources.

Again, an admitted student reading this book has every reason to believe that these representations are true and that if they show up and choose to purchase an education at NYU, that they'll receive what is being conveyed by NYU.

THE COURT: Can I ask you just to go back to tuition for a moment?

MR. OBERGFELL: Yes.

THE COURT: Did all NYU undergraduate students pay the same tuition for spring 2020?

MR. OBERGFELL: For most of the schools and colleges,

they are very similar. There are, I think, a handful of schools that have slightly different tuition. However, your Honor, I don't think that's really relevant to the class motion because it runs to damages. And it's the black letter law of the Second Circuit, as we noted in our papers, that individualized damages considerations do not defeat class certification. That's the Roach case as well as the *Sejas v. Argentina* case that's cited in our brief.

To circle back very quickly to the final thing that the Second Circuit told us to look at, and that's NYU's prior course of dealing with its students. And we've learned in discovery that in the 188 years that New York University was a going concern between 1831 and March of 2020, it always offered in-person and on-campus education to its students. [redacted] So the Second Circuit said that we can look to prior course of dealing to inform the basis of the implied contract, and here, we have clear evidence, class-wide that evidence, NYU has always held courses in person and on campus up until the time for the first time that they dispersed their entire campus for approximately half of the semester in

the spring of 2020. We would consider that an implied term and then a breach of that implied term.

Your Honor, I have presented now three forms of evidence that the Second Circuit specifically said can form the basis of the implied contract, and I think I've tried to prove to you that each of those forms of evidence are common to every single class member and there's no individualized inquiry that would need to be undertaken to determine that. And in its brief, by the way, NYU does not deny that all students are exposed to the representations on Albert. It does not deny that it sends these university-wide marketing materials to all students, and it does not deny that its prior course of conduct was such that it was always an in-person and on-campus instruction for students.

Instead, I expect that you will hear that, well, there's a lot of students and a lot of different types of mailers at issue. But this Court does not need to even get there. If you find that the Albert portal is common, which I believe I've shown that it is; if you find the university-wide marketing materials are common, which I believe I've shown that it is; and if you find that there was a prior course of dealing such that students could reasonably expect and on-campus and in-person educations, which I believe I have shown, this Court need look no further for the terms of the implied contract for in-person and on-campus education. So we can disregard most of

NYU's argument regarding commonality and predominance.

THE COURT: What about injury though? Obviously, it doesn't seem to be disputed that all of NYU went remote in March of 2020. But the level of injury to each student, how is that not an individualized inquiry? I know you've already spoken about damages, but understanding the difference between an econ student and a visual arts student going in-person is quantifiably different; is that not?

MR. OBERGFELL: No, your Honor. That's not what we're speaking to prove. And as our expert declarations, I think, set forth, what we're trying to prove is that for that particular aspect of the education, the in-person and on-campus aspect of the education, that there was an objective market value to that feature of the education that was applicable to all students. So our experts will seek to prove that when NYU closed and moved to its remove form of instruction, that that form of instruction was objectively less valuable, less of a fair market value, than the education that was bargained for the spring 2020 semester.

THE COURT: Okay. But all of the universities across the country, I think maybe 99 percent, went remote. So the market value in March and April of 2020, it arguably plummeted for everybody, right?

MR. OBERGFELL: Potentially.

THE COURT: So if what we have to look at as the

market, there was no market for in-person undergraduate instruction in March and April of 2020.

MR. OBERGFELL: I don't think that's the correct way to look at it, your Honor, and the reason is because that we have to look at what the terms of the contract were at the time when they were entered into. So the students were taking a form of education, which was in-person and on-campus up; until the time of the closure, right. And so, the relevant inquiry is that education has a certain value, right, what was bargained for has a certain value. When there's been a switch to a fully remote form of instruction, our argument is——our theory is——that now that this new education that's being provided has an objectively less value than the one that was provided for the first couple weeks of the semester, and students should be able to recoup the difference in that market value and that can be done on a class-wide value as our experts have shown. I would like to speak very briefly on the breach element, your Honor, or the breach of implied contract. And I touched on this before, but there's no individualized inquiry necessary for breach. And the reason for that is because there was one agreement at issue here: Tuition in exchange for in-person and on-campus education. And there is no dispute that NYU, as you've said, closed its campus in March of 2020.

[redacted]

[redacted] There was no individualized inquiry even done by NYU to determine whether a tuition refund should be appropriate for students.

Instead, the position that NYU took was, well, we gave you the credits at the end of the semester, and therefore, you know, we're not going to lower our tuition. So that decision was either correct or incorrect, but that's a class issue. That's not an individualized issue.

Before I move on to unjust enrichment, your Honor, I would like to address some of the other cases cited in our brief. We cited numerous examples where tuition refund cases have been certified both for breach of contract and for unjust enrichment. We've cited the *Ninivaggi v. The University of Delaware*. We've cited *In re Pepperdine*, and we've cited *In re University of Southern California*; all of which certified classes, tuition classes, based on very similar types of common evidence that is available here, namely, course catalogs, course of dealing, and each of those judges -- and those universities are every bit as complex and diversified as NYU. But each of those judges, three different judges, found that a tuition class could properly be certified and that a plaintiff was able to represent these common issues and seek to vindicate the rights of the class.

THE COURT: What about the cases where the judges have not certified the classes? *Suffolk University* in Boston, I

think is one, where the court declined to certify a tuition class.

MR. OBERGFELL: There are cases in which tuition classes have not been certified for various reasons. However, we think that the *Ninivaggi* case, the *Pepperdine* case, and the *University of Southern California* case are most applicable here because it is the same forms of common evidence that we are seeking to use to certify our tuition class. Not only that, your Honor, but in *USC* as well, the Court accepted the very same damages model that I'm proposing here and certified the class based on that damages model. That is a choice-based conjoint to determine the objective overpayment of the tuition for the time when the university moved to remote format. And that's a very published opinion from the Central District of California.

THE COURT: Right. I have read it.

MR. OBERGFELL: Okay. Which we think should be very persuasive here.

So I would like to briefly touch on the unjust enrichment claim, if I may? So the unjust enrichment claim goes hand in hand with the breach of implied contract claim in the sense that they're based on the same facts, obviously, and the same wrongdoing. Basically, this notion that students were going to get an in-person and on-campus experience and then were deprived of that by NYU for approximately half of the

spring semester in 2020. The reason that certification of the unjust enrichment claim is appropriate is because it's the same objective inquiry. Students were all deprived of the objective value of the loss of the in-person education that they had bargained for, and because that decision was made at the university level and because there was no individualized inquiry into the equities of the situation, then certification and predominance can be met. And New York courts have routinely certified unjust enrichment cases in the circumstance where the equities can be judged on a class-wide basis, which we think they can here.

THE COURT: NYU cites a number of cases from this district from their brief where the courts have declined to certify classes of unjust enrichment claims. How are those not binding on me? I'm looking at page 27 of NYU's brief, the *Weiner* case, *Tropical Sails*, *Crab House*, and *Student A*.

MR. OBERGFELL: Well, those cases did not hold that it's categorically prohibited to certify --

THE COURT: I didn't say they did. I said the courts in each of those cases declined to certify a class based on unjust enrichment claims.

MR. OBERGFELL: Correct, they did, and obviously, every case depends on its own facts. But I think that the law -- for example, we're looking at *Jermyn v. Best Buy Stores*. That is 256 F.R.D. 418, 436, which is a published SDNY decision

where the court did find that predominance was met for an unjust enrichment claim, and that was based on an undisclosed policy by Best Buy that was common to all class members which deprived the class members of value. So it really depends on the individual facts of the case.

I would also note that the other cases that I've discussed, the *Ninivaggi v. University of Delaware* case, the *In re USC* case, and *Pepperdine* all certified restitution classes or unjust enrichment classes. Here is the bottom line as to why it's so important, your Honor. If, for whatever reason, NYU is successful on a particular contract offense, say impossibility for example, that doesn't mean that the plaintiff and the class members' claims go away. It means that the claim is converted for a claim for restitution because NYU is still holding the tuition money that it should have refunded. And that's a matter of New York law, and it was also explained *In re USC* case as well.

THE COURT: I'm mindful of time. If you have one more point you want to make, and then save time for rebuttal as well?

MR. OBERGFELL: Yes, your Honor. I would like to briefly touch on adequacy, if I may, on the last point?

THE COURT: Sure.

MR. OBERGFELL: And I know if I haven't gotten to everything and to the extent I haven't gotten to it, we

definitely rely on our papers on that issue.

THE COURT: Of course.

MR. OBERGFELL: But here, I have to say that plaintiff has done everything that is required of a class representative. Plaintiff has reviewed the operative complaints. Plaintiff has produced over 2,000 pages of documents ESI. Plaintiff has been in constant contact with us on a regular basis. And plaintiff sat for their deposition for over eight hours, vigorous questions from Ms. Gordon, and plaintiff is prepared to carry this case through to trial.

Plaintiff has a strong command of the case, and we cited in our reply brief numerous aspects of plaintiff's deposition testimony, which shows that plaintiff has a good command of what this case is about and what they and the class are seeking. So I would just note that none of the arguments that were made by NYU get even close to establishing a conflict of interest between the plaintiff and the class, which is the standard for adequacy in the Second Circuit.

So with that, your Honor, thank you very much.

THE COURT: Just one final question for you. This is just a math question. In the plaintiff's declaration, they say that they paid in total "$41,609.09" for spring 2020. The math that is in that paragraph doesn't add up for me, and Mr. Dorph's declaration has a different number from NYU's records. I don't think it's a material difference, but just

for purposes of my understanding, is there a dispute about what Hall-Landers paid in tuition for spring 2020? Or can I just pick one of those numbers to use for purposes of writing the report and recommendation?

MR. OBERGFELL: No. The tuition is not disputed. It's $27,900 and something, I believe. The rest was a combination of fees and other charges that were ultimately aggregated to that other value.

THE COURT: Okay. All right. Thank you, Mr. Obergfell.

Ms. Gordon?

MS. GORDON: Thank you, your Honor. I'm just going to stay here if that's okay?

THE COURT: Wherever is fine as long the court reporter can hear you.

MS. GORDON: Can you hear me, Madam Court Reporter? Fantastic.

Good morning, your Honor. Keara Gordon for DLA Piper for defendant, NYU. Class certification should be denied here for many of the same reasons that Judge McMahon denied class certification in *Garcia De Leon v. NYU*; a case that the plaintiff's counsel did not mention to you this morning, but a case where there, like here, the plaintiff failed to establish commonality, typicality, adequacy, or predominance.

We do have a PowerPoint——thank you, your Honor, for

letting us bring it——which I'll pass up in a minute. But before I do, I would just like to touch on the three main reasons that we believe class certification should be denied. They are:

Number one, there are individualized issues of breach and injury, and those overwhelm and prevent commonality, typicality and predominance.

Number two, there are individualized issues of contract formation that also overwhelm and prevent commonality, typicality, and predominance.

And number three, the plaintiff has not shown that they are an adequate class representative.

So first, here as in *Garcia*, the plaintiff cannot demonstrate both breach and injury with common proof. As the Court knows, in *Garcia*, just like here, there was a plaintiff who was a student at NYU, and after COVID forced the transition to online instruction, the student sued for refunds, asking for tuition and fees back. And there, as here, the Court analyzed those claims, and after class discovery, determined that the issue of whether injury was common to everybody was a very fact-specific injury.

In that case, for example, one of the things that Ms. Garcia complained about was she said she wasn't able to access student health services following the pandemic. And the Court reviewed that, and the Court determined that Ms. Garcia

had not shown any proof that everybody at NYU, all NYU students, had had the same alleged inability to access health services and to try and figure that out was going to require tens of thousands of individual very fact-specific determinations. That very well-reasoned opinion is equally applicable here.

Now, the plaintiffs didn't mention *Garcia*, and in their reply brief, they relegate it to a footnote. They say, your Honor, don't look at it. It's irrelevant. It doesn't have anything to do with this case. Because they made the strategic decision at the 11th hour to just abandon their fees claim. But what you just heard and what's in the brief, they are still at issue. They are absolutely still at issue.

When you look at what they're claiming are the promises that they're asking your Honor to enforce, they were things like services and programs like you heard this morning: I didn't get access to clubs. I didn't get access to intramurals. Those are the same things that are at issue as *Garcia*. They can't have their cake, your Honor, and eat it, too.

Similar to Ms. Garcia's complaint, when you look at what the plaintiff is complaining about, [redacted]

[redacted] [redacted] Well, in order to determine whether there was a breach in injury, your Honor would have to look at the facts surrounding the promise and the facts surrounding whether they, the plaintiff, was actually denied access to that service. We'll get to those facts in a minute, but that is super clear that that is not common evidence. That is a fact-specific determination, and the evidence to help you make that determination varies by member to member, which is the definition of an individualized question.

Second, individualized issues of contract formation overwhelm commonality, typicality, and predominance. There's no formal contract here. This isn't the case where everybody got the exact same materials and everybody signed up for the same thing at the same time. Remember, too, you've got a putative class of four years of students who saw different marketing materials at different times and that changed over time.

When we looked to define what the implied contract is we go to what the plaintiff said, and the plaintiff is not pointing to just one thing. And not even just the three things that counsel mentioned this morning, but when you look at the plaintiff's testimony, it's a mosaic. They are saying you've to look at the enrollment materials. You've got to look at website statements. You've got to look at Tisch's bulletin.

And Tisch is only one of ten undergraduate schools. You've to look at Tisch's policies and procedures document.

And most vividly demonstrating that there is no class-wide proof, [redacted] It is only physical therapy that's specific to the dance program. It is not university wide. So there is no common proof of this contract that they are formulating.

THE COURT: Well, but what I understand the plaintiffs to be arguing is that the focus is on the in-person piece. You could put physical therapy. You could put music studio. You could put classroom. You could put seminar, whatever it is that follows in person. The promise is whatever service NYU is going to provide, it's going to do it in an in-person format in New York City. And that's what I understand them to be saying is the common question about that. Was that promise made across the board to all of the NYU students regardless of which program they were in? So how is that not a common question focusing on that in-person piece?

MS. GORDON: So obviously, it became illegal and unsafe for NYU to deliver in-person instruction.

THE COURT: Sure. But that goes to your defense. That's not the promise.

MS. GORDON: True. But focusing on injury, if you were going to be given, for example, career counseling services, and you could get them just as effectively remotely as in person, then you haven't been injured. If you could get instruction for classes as effectively in person as remotely, as it seems like this plaintiff did because we're going to look at all the gushing praise that they had for their professors, you haven't been injured. If you wanted mental health counseling and you could get that remotely just as effectively, you have not been injured. And all of this is so subjective.

There is no -- I haven't seen any common proof from the plaintiff that that particular inability to deliver all of these myriads of things in an in-person versus a remote instruction, where is the evidence that that affected all 26,000 NYU students in the same way? There is none.

So, if I may, I'm going to quickly touch on adequacy, and then I'll hand out the handouts?

THE COURT: Yes.

MS. GORDON: So Ms. Hall-Landers is an inadequate class representative for three reasons. First of all, they are not knowledgeable about the fundamental aspects of their claim. Number two, they lack credibility on key issues. Number three, the contemporaneous evidence contradicts their claim that they didn't get the education they deserved.

And just by way of example, one of the things that the

plaintiff says that they want as damages is the money they spent to buy a ballet bar, and they said that they had to buy this in spring of 2020 because of the transition to remote instruction. But when we asked for the proof as to how much is this, what are the specifics around it, it turns out they didn't buy that until June. So it was after spring. And the fact there that is troubling is that they didn't know the basis of their claims when they made their complaint and then subsequently when they continued to seek that.

So with that, if I may pass up --

THE COURT: Sure.

MS. GORDON: I'm giving two to the plaintiff's counsel as well.

MR. OBERGFELL: Thank you.

MS. GORDON: If I may, your Honor, ask you to go to the second page?

THE COURT: Yes.

MS. GORDON: So I just touched on the first three issues here, and then briefly this morning, I'll also touch on damages and unjust enrichment.

But going to the first reason, if you turn the page, as Judge McMahon found in *Garcia*, individualized issues of breach and injury overwhelm commonality, typicality, and predominance. If you go to the fourth page, as I was talking about before, the definition of individualized injury, as your

Honor knows, and this is from the Supreme Court's opinion in *Tyson Foods*, is individualized injuries are where the evidence that you will have to consider is going to vary from member to member and is not common to the class.

If you look at page 5 of the document, we've put in there some of Judge McMahon's specific findings in *Garcia* because we believe they are equally pertinent here. There, Judge McMahon found that the plaintiff had not demonstrated and could not demonstrate that she suffered the same injury as every other NYU student. And remember there, it was also, I couldn't get access to things that I wanted because of the shift to remote.

THE COURT: I asked Mr. Obergfell a follow-up question about tuition across different NYU programs. Can I ask the same question of you? Is it set differently for different programs?

MS. GORDON: It is, your Honor. The tuition amounts are different at the different schools. There are ten different schools within NYU. The tuition varies depending on the curriculum. And there are also different offerings at the different schools, so there will be different school-based programs, different facilities, different things that are offered because, for example, you know, a visual arts student is different from an econ student. So what Tisch needs as arts and that is going to be very different from Stern, which is the

business school, or the nursing school or other schools.

So the offerings are different. Like Tandon, for example, is the engineering school. That is priced differently. It's on a different campus in Brooklyn. So there's many, many differences among them. So when you are looking at this -- you know, the next quote was essentially different people paid different amounts for different things. That still holds true here in a tuition case.

The judge also found there that in order to determine injury, which we were just talking about a minute ago, if you weren't provided this particular service that you say you wanted, were you actually harmed? In order to determine that, what Judge McMahon said is that you are going to have to do a search and inquiry into what each of the, you know, over 26,000 students did or did not do with regard to availing themselves of those.

On the next page, this just shows you some of the services, facilities, and programs that are at issue here as were in *Garcia*. So if you turn to the next page. We're now at 7, the left-hand quote is a quote from the plaintiff's opening brief. And that is to show you that when describing the promises that they are seeking to enforce, when you look at what they said, it is things like studios, laboratories, athletic facilities, student centers, clubs, and organizations; all of the same things that were at issue in *Garcia* and all of

the same things that were held there to require fact-specific determinations to determine breach and injury.

And if you look at slide 8, that's the *Student A v. Liberty United* Case that your Honor mentioned earlier. What all of this amounts to, your Honor, is hopelessly individualized issues because you really can't——as the Court there found, too——you can't determine injury unless you've looked the at whether and to what extent the student could use the service, wanted to, and did use the service.

So if you go to page 9, when you think about the fact that your Honor is going to have to make fact determinations about 26,000 students and what they were promised and what they could access and what they couldn't access, that is very individualized. [redacted] First of all, that was not common to the university. That was a program specifically for dance students, so no common evidence there.

Number two, there's no evidence of breach. We put in declarations from Sean Curran -- Professor Curran, and from the [redacted] Professor Zujko. Both of them attest in their declarations [redacted], albeit remotely, to the dance students who wanted it in the same way. [redacted]

[redacted] There's no basis for them to say under oath that what they would have gotten wasn't as good as what they expected because they never tried.

When you look at some of these other examples here and in our brief, it's the same thing. They complain about not being able to be involved in student government. They never ran for student government. They never participated in student government. Same thing we heard today. There were all these clubs offered to me, and I was really hurt because I didn't get to participate in any of those clubs. The plaintiff never signed up for any clubs. If you never signed up for a club, you never went before, during, or after COVID, how have you been harmed? You haven't.

So that you'll see on page 10, we'll just see that very, very quickly. This analysis is replicated over thousands of students. There's what? Over 400 clubs, and many of these services, programs, and facilities continued after COVID. That is undisputed.

As Judge Parker of the Second Circuit observed in *Rynasko*——and that is page 11——class allegations are implausible because commonality and predominance would have to be found among the extremely heterogeneous class, and he's right. If you look at page 12, this is even more glaring here with regard

to this plaintiff because their grievances are particularly atypical and unique. We asked them. We asked them, Tell us in what way you were deprived of what you thought you were getting when the pivot of instruction went from in-person to remote? And this is what they said. They said: I had to buy a ballet bar. Of course, that's not correct, but certainly everybody at NYU did not buy a ballet bar. I had to dance in different time zones. Again, no common proof that that was applicable to everybody, and then certain things that are quite unique. For example, "I had to choose whether to show my feet, my torso, or my arms on camera." They were upset because professors couldn't provide physical cues and feedback by actually touching our bodies. Dancing space was "limited," and they were upset that they didn't have a live audience. Now, these types of unique alleged injuries are certainly not applicable to everybody at NYU. Most econ majors, most education majors, most other majors are not going to have these kinds of concerns. These are unique to the named plaintiff.

And if you turn to page 13, just as in *Garcia*, these facts are "peculiar to our named plaintiff." There's no evidence that any of them have anything to do with any other NYU student. On page 14, we just have the quote that your Honor is familiar with that predominance is an even higher burden than commonality. Since they can't meet commonality and typicality, they cannot meet predominance. On page 15, we just

provide the quote from *Garcia* where *Garcia* found that, again, there was no predominance because of these specific individualized injuries that were necessary.

With that, I'll move to page 17 and our second point, which is contract formation is an individualized issue. And if you look here on page 17, in *Garcia* Judge McMahon quoted the Second Circuit in *In re Foodservice*, and that court -- those courts acknowledged that while where the claims require examination of individual contract language, it is appropriate to decline to certify a breach of contract action. Also in the *Nguyen* case, in the absence of form agreements, class members will have to prove their case with individualized proof, and that is the case here.

On page 18, just a couple of specifics. As we've talked about, ten undergraduate stools with very, very different offers to their students, over 230 areas of study, over 26,000 undergraduate students, more than 5,000 faculty members teaching nearly 5,000 classes. There is no proof that the quality of those 5,000 classes all were the same before COVID or were less than what people intended after COVID.

So, you know, then if we move to page 19, going back to what are the terms of contract that's alleged here, the plaintiff defines their complaint. So at their deposition, we asked them: What is it that are the elements of your complaint? What promises were made to you, and what promises

do you think were broken? And on page 19, we have what they said. As I said, it's a mosaic. They said that the contract consisted of course descriptions varied by courses. The enrollment information of Albert --

THE COURT: Well, I think what Mr. Obergfell was saying was the in-person, the field, whether it was the course search or Albert, the field area, said that the class would be in person. That's what they were relying on.

MS. GORDON: Yes, we'll get to that in one second, but I would just like to clarify that that's not it. They are relying on a number of different things, and strategically plaintiff's counsel is just pointing out a couple today that he thinks help him more. But when you look at what the contract is according to the plaintiff and how they have defined it, it is not just Albert. But we will get to Albert in just one second.

Okay. So on page 20, that's just all of the different -- it shows you just how different the marketing material is, and it changes over time. So let's get to Albert since we were just talking about it. That's on page 21.

THE COURT: Right.

MS. GORDON: So the plaintiff, in their brief and today, is heavily relying on Albert and the in-person statement there, but there's a couple of problems with that. Number one is, as your Honor acknowledged, the plaintiff admitted that

they did not see that before when the plaintiff says the contract was formed. The contract was formed according to the plaintiff when the university accepts the student for enrollment and they enroll. At that point in time, there's no evidence they saw Albert. There is no evidence everybody saw Albert. We heard evidence this morning that, well, yeah, maybe it's online, and people could go look at it. But where is the evidence that all 26,000 undergraduates students actually took the initiative to go look at Albert before they enrolled at NYU? There's no evidence -- I haven't heard any evidence cited to you of commonality of that.

Also, the plaintiff admitted that they themselves didn't see it. So in any event, there couldn't be proof of that. If you go to the next slide, we heard in the brief and we heard this morning, oh, your Honor, don't worry about this. The Second Circuit in *Rynasko* already said that Albert is part of the contract. Well, that's just not so. When you look at what *Rynasko* said, and it's here in the slide, they said the question is not whether the allegations necessarily establish an implied contract. But the question before them -- remember this was at the pleading stage. They had to accept everything as true, and they didn't have the benefit of the named plaintiff's testimony saying I never saw this before I contracted. Without the benefit of anything, they said the question is going to be -- the question is whether a reasonable

fact finder could conclude that the plausible allegations demonstrate an implied contract. Here, we know on the basis of the plaintiff's testimony that they can't because the plaintiff never saw it.

We also heard——and if you look at the next page——plaintiff is now talking about course of conduct. Again, at their deposition, the plaintiff did not mention course of conduct. That was something that was raised later. When you hear today from the plaintiff's counsel, the evidence of course of conduct is all based on what NYU produced in discovery. There is no evidence that at the time of contracting this is what the plaintiff is focusing on and this is what the plaintiff is thinking.

Also, the Second Circuit has not held that course of conduct necessarily means there was an implied contract for in-person. Once again, the Second Circuit was looking at the pleading stage at a variety of different things, course of conduct being one of them, and saying maybe at some point later in the proceeding, the fact finder may or may not find this. So that has not been determined. Instead, individualized review is going to be necessary of what the different schools, what the different students saw, and, as I said, that changes over time.

Some terms -- this is on page 24, which we'll just go quickly. Some of the terms are clearly not enforceable, and

your Honor, I think, picked out a good example. It's your city now. You know, it's your city now. How is that an enforceable contract term? It simply is not. The other thing that we heard about this morning was the welcome packet, exhibit 6. That also is not anything that the plaintiff mentioned during their deposition. That was not a document that was produced by the plaintiff, and frankly, it's unlikely the plaintiff ever saw it. That welcome packet goes out to admitted students at admission time. This particular named plaintiff was not admitted regular -- admitted during the regular process. They were waitlisted, and they would not have received this material. There's no evidence that they did.

So moving then to adequacy, if you could direct your Honor to page 26, there are three fundamental adequacy failures here. Number one, the plaintiff is not credible. Number two, the plaintiff is not knowledgeable about their case, and contemporaneous evidence contradicts their claims.

As your Honor knows that in assessing adequacy, one of the things that you will look at is the honesty and trustworthiness of the named plaintiff. That's the *Savino* case, among others. Page 26. I'm not going to belabor the point given the time. We already talked about it, the ballet bar.

If you turn to page 30, there's a disconnect between what the plaintiff said about paying tuition and what actually

happened. The plaintiff in the second amended complaint said that they paid tuition. They admitted at their deposition, in fact, that was not true. Undeterred in a declaration with this Court subsequent to that, they nevertheless said, I paid, and that is just not correct. As your Honor pointed out, there are issues with the fact that the named plaintiff did not pay. They are not part of the class as they have defined it.

We heard today that, well, it was a gift, and the money was transferred to Hall-Landers and then Hall-Landers then transferred it to NYU. That is not correct. Factually, it is wrong. We have put in our papers the proof from NYU that shows that it was the father that paid, and that does have ramifications, including for whether this plaintiff would receive a windfall if they got money back to them that they had not personally paid.

Quickly looking at page 32. The plaintiff here sued without knowing that they had actually been refunded money that they were suing NYU to get. And they should have known, and they should have bothered to check. So here on page 32, the second amended complaint at paragraph 8 said NYU continued to charge full tuition and fees as if nothing had changed. That is not true. All of the fees, the four fees, housing, meal plan, insurance and equipment, and production fee had all been refunded in 2020, and a lot had changed because in that spring semester of 2020, NYU actually paid $61 million to students in

refunds. So all of that is there.

On slide 33, I'll just direct your attention to exhibit 62 because that's a document that the plaintiff produced. And that document shows that the plaintiff was told on March 30 of 2020 that their refunds had been processed, and they were in the bank. And the plaintiff saw that because they flipped it to their parents on April 1, 2020, but nevertheless, they testified years later that they had not gotten the tuition -- or they had not gotten the refunds. Apologies.

Lastly on adequacy, I'll direct your attention to page 36, and here, you know, one of the adequacy considerations is: Is this named plaintiff particularly vulnerable to cross-examination? And here they are for a bunch of the reasons we've already talked about and for the reasons visibly demonstrated on this page. The fundamental tenet of the claim is: I didn't get the education I paid -- they didn't pay. I didn't get the education my father paid for you. But if you look at the quotes and the contemporaneous evidence of what they were saying at the time, they're saying, I truly loved your class. They are saying, You're an amazing professor. You're an awesome professor. Thank you. And, You're an amazing professor "in-person and online."

So just briefly talking on damages for a second, because I know we're short on time, I would just like to go to page 39.

THE COURT: I guess, one thing if you could focus on --

MS. GORDON: Of course.

THE COURT: -- in particular, as Mr. Obergfell pointed out, that the *USC* case, Judge Gee, before her was the same damages model that the plaintiff was advocating for here. So why is this case different than that?

MS. GORDON: So this case, it's very clear, your Honor, that before, during, and after COVID, there was no market price differential between the cost of an NYU in-person education and the cost of NYU online education. We have provided to you your Clay Shirky's declaration. Mr. Shirky is a vice provost at NYU, and he says since he got to NYU in 2001, there has been no price differential. Indeed, NYU does not consider the modality of the instruction when setting tuition rates. So I don't think it could be disputed that the real-world evidence, what we should look at, there is no market value differential.

There are a number of cases that we have cited in our brief that in circumstances like this where there is no real world market differential, it is improper to hire some expert who does conjoint analyses for a living to try and cook one up. The fact is there is no prince differential, and as your Honor mentioned, I also don't understand what they think the alternative was. Every single school went remote because it

was illegal and unsafe to do anything otherwise. And the damages model they're proposing just completely ignores all of that. So we don't think it should be -- we think it should be rejected.

And I could mention unjust enrichment or I could sit. Thank you, your Honor.

THE COURT: What I'd like to do is just take a short two-minute recess, and, Mr. Obergfell, I'll let you do your rebuttal.

MR. OBERGFELL: That's fine.

THE COURT: Okay. Thank you very much. We'll be right back.

(Recess)

THE COURT: You can be seated. Thank you. Mr. Obergfell?

MR. OBERGFELL: Good. Thank you, your Honor.

A couple things to be said, and I'll start with the first overtly false statement that was made by NYU. NYU just represented in its papers and before this Court that plaintiff made no reference of partial refunds in their second amended complaint. That is a false statement, and NYU, I guess, didn't read paragraph 93 of the second amended complaint, which states that NYU did not issue a refund of tuition but did issue a partial refund as to certain mandatory fees. So this notion that plaintiff misrepresented something in their complaint is

utterly false.

The second thing is NYU claims that plaintiff doesn't have a command of her own case. Yet Ms. Gordon asked plaintiff, and this is at plaintiff's deposition, page 28, line 13 and 22.

"Q. Is the contract that you just described memorialized in writing?

"A. In the course descriptions in Albert, courses were described as being set in-person instruction giving specifics as to the location on campus. In addition, we paid a specific itemized amount of tuition, and that was paid for in-person courses."

So what plaintiff conceives of the bargain is totally consistent with the evidence that I presented to this Court in my affirmative argument, and that is that they had this representation of an in-person instruction that was not provided. Full stop.

THE COURT: I want to just go back to when the contract was formed because I'm guided, again, by what the Second Circuit has instructed me to do in terms of that issue. And I know that the plaintiff testified in their deposition, "When I hit enroll on the enrollment website for the courses and paid tuition..." that's when they said that the contract was formed.

Again, I'm coming back to enrollment versus are there

multiple contracts? Are there contracts formed every semester? Is there an individual contract for every course that a student signs up for? What is the point in time that I'm supposed to be looking at?

MR. OBERGFELL: Well, I think the answer is that once plaintiff enrolled in NYU as a student, New York law would say, at that time, the relationship between the university and the plaintiff has become contractual.

THE COURT: Sure.

MR. OBERGFELL: Right. But that doesn't answer the question of what are the terms of contract.

THE COURT: Exactly.

MR. OBERGFELL: And obviously the student and the university have a relationship that spans multiple years. And like any other contract, if I enter into a contract with someone today, other terms could be added. It's the same contract, but new terms could be added or not added.

THE COURT: Okay. Then how do I determine a breach? If the terms of the contract change over time, how do I determine when NYU breached the contract?

MR. OBERGFELL: Even if you look just at the time of the enrollment, as I indicated before and NYU equivocated on this, [redacted] NYU is seeking to make an argument, oh, well,

maybe they didn't see it. Maybe some people didn't see that. But last time I checked, contracts are objective. We don't look to, oh, did somebody review a particular term or a particular portion of the contract.

Contracts are objective based on their terms. So if these documents existed at the time of enrollment, then New York law would say they are part of the contract. Think of the reverse, your Honor. Imagine NYU is bringing a claim against one of its students. Would it be a defense for the student to say, oh, I didn't see that particular part of the bulletin so you can't enforce it against me. That's simply not how contracts work. It's not just me saying it, your Honor. If you look at the *Ninivaggi* decision, Judge Bibas is very clear on this.

Contracts are objective. It doesn't matter if someone saw something or didn't see something. But then, there wasn't a good answer in terms of just course of dealing, and your Honor referenced the *USC* decision. The *USC* court rejected the very same argument made by NYU here that it doesn't matter whether people saw different things as long as there was a common promise, which we think we show that there is. Then the court went on to say, and regardless, the course of dealing is such on that alone, I can make a determination as to the implied contractual term for in-person instruction. I think the Second Circuit was getting at the very same thing. These

things were sufficient on their own for an implied contractual term.

THE COURT: Ms. Gordon didn't focus too much on it today, but I read in NYU's materials that students could seek a tuition refund. Is that correct that students could make an individualized claim why they were entitled to a refund of tuition?

MR. OBERGFELL: So let me be clear on this. So the timeline is as follows: NYU has a specific refund deadline as part of its academic calendar. That deadline had passed by the time that NYU had closed, okay, and from there, students were not allowed a refund as a matter of course. I think there's always a means to make a particular petition or something under specialized circumstances, but there was certainly no refund issued as a matter of course.

THE COURT: Notwithstanding the deadline, did the plaintiff here make any application for a tuition refund explaining why they felt that their education was deficient?

MR. OBERGFELL: Other than filing this lawsuit, I'm not aware of a specific request.

THE COURT: Okay. Thank you.

MR. OBERGFELL: The other thing I would like to say, your Honor, is on the question of damages. Because it's puzzling to me how in NYU's view damages can be both subjective and objective at the same time. If you read the declaration of

Ms. Kirk Fair and Mr. Tomlin, who are NYU's experts, their position that the value of tuition is objective, and Ms. Gordon said it during her presentation. She said every student got what they bargained for. It was the same price, right. So they are taking an objective standard as to damage, but on the other hand, when it suits them, they say, oh, no, we have to look at how each individual subjectively valued the education to determine damages.

Well, it's one or the other. It's either objective or it's not. So we're saying it's objective because it was objectively less valuable as a matter of economics. NYU appears to be saying through its experts that it's objectively the same price because of the prices of the market, but it's a battle of the experts and that's a matter of economics. That's not a matter of predominance for class classification. And the *EZ Seed* case is very clear on this and the Second Circuit's interpretation of *Comcast*. Plaintiff only needs to propose a damages model that is consistent with the theory of liability. Plaintiff's theory of liability is that the education from March 23 to May 11 was objectively worth less and that they should be refunded that fair market value, and that is consistent with both the implied contract claim and the unjust enrichment claim. And that's full stop for predominance black letter law of the Second Circuit.

THE COURT: Okay. One final point, and then I have a

final question for Ms. Gordon as well.

MR. OBERGFELL: Yes. A lot of Ms. Gordon's presentation was about *Garcia De Leon*, and I just want to briefly touch on that before I sit down. And it is my position that *Garcia De Leon* is completely distinguishable by this case, and I'll tell you why. There was no tuition claim in *Garcia De Leon*. It was only a fees claim. Why is that significant? Okay, it's significant because the way NYU charges their particular fees, it's on a school-by-school and program-by-program basis. There's one universal fee, but most of them diversified, and not only that but the determination as to whether those fees should be refunded was not made by NYU leadership, it was made by the individual schools at the individual level, which for obvious reasons presents a much more difficult class situation than an exchange of tuition for in-person instruction.

Every single student paid tuition. None of them got the in-person instruction they bargained for, and NYU's leadership was the one who decided carte blanche——this was undisputed in Ms. Gordon's presentation and in their brief——that no student would get a tuition refund as a matter of course. So we're going to put in front of the jury in this case all common evidence if we're able to. The common evidence is the implied terms. It's the common evidence of the breach and then the common evidence of the damages, and that is all

that is required for class certification.

Thank you, your Honor.

THE COURT: Okay. Thank you.

Similar question I asked Mr. Obergfell. Notwithstanding the deadline Mr. Obergfell just mentioned about seeking tuition refunds in a normal year, was there either a path or did students generally apply for tuition refunds, and did any students get tuition refunds?

MS. GORDON: Yes. So that was the subject of testimony -- sorry. Yes, that was the subject of testimony at the depositions, and it's also in our declaration. So there was a process, and it's at the school level and determined by the different schools. So a student, subsequent to the deadline, could seek a refund from the school, and the school would take all of the individual facts into account and determine whether or not to issue refunds. My understanding, based on the deposition testimony, is yes. There were some refunds that were issued.

THE COURT: Okay. Thank you very much.

MS. GORDON: You're welcome.

THE COURT: All right. If we could ask you, Ms. Gordon, since you provided these slides to the Court, they should be part of the record. So if you would just submit a letter on the docket by attaching the slides so they become part of the case record --

MS. GORDON: Yes.

THE COURT: -- and we will take the motion under advisement and issue a report and recommendation in due course. But I appreciate everybody coming in today for the helpful presentations. I hope you have a nice Thanksgiving holiday, and we'll be adjourned. Thank you.

MR. OBERGFELL: Thank you, your Honor.

MS. GORDON: Thank you. Happy Thanksgiving to you, too, your Honor.

(Adjourned)

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